United Nations CCPR/C/SR.2775

International Covenant on Civil and Political Rights

Distr.: General
18 May 2011

Original: English

Human Rights Committee

101st session

Summary record of the 2775th meeting

Held at Headquarters, New York, on Tuesday, 15 March 2011, at 10 a.m.

Chairperson: ..... Ms. Majodina

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of Togo (*continued*)
(CCPR/C/TGO/4, CCPR/C/TGO/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Togo took places at the Committee table.*

2. **The Chairperson** invited the members of the Committee to continue putting their oral questions to the delegation of Togo in connection with questions 1 to 15 on the list of issues (CCPR/C/TGO/Q/4).

3. **Mr. Flinterman** said that the two draft laws that had been proposed to amend the Individuals and Family Code and the Criminal Code, in an effort to reaffirm the principle of gender equality and combat and eradicate violence against women, had still not been adopted. He wondered whether that could not be ascribed in part to the difficulty of changing a mindset that refused to allow a place for women anywhere other than in the home. It would be useful to know if those draft laws would become law, and whether there were any programmes or policies in place to change the mindset of policymakers and the population as a whole in respect of women's rights.

4. **Ms. Waterval** sought more information about the timeline and process of adoption of laws, and about the ages of minors in detention.

5. **The Chairperson** invited the delegation to continue its replies to the oral questions put by members of the Committee in connection with questions 1 to 15 on the list of issues.

6. **Ms. Azambo** (Togo) said that Togo was in the process of implementing its poverty reduction strategy paper, which included a segment on the protection of women, especially rural women, from violence in all its forms. It also included strategies for social mobilization, raising of public awareness, and encouragement of traditional leaders, decision makers and the population as a whole to protect women's rights. Services were also being provided in rural areas in order to lighten the burden that generally fell on women in those communities. Examples included provision of potable water in villages so that young girls did not have to travel distances to fetch water; establishment of early childhood centres to free girls from the burden of caring for their younger siblings instead of attending school; and building of health centres to reduce child and maternal mortality during childbirth. The Government also provided funds and farming equipment to help rural women improve their lot.

7. The process of amending the Individuals and Family Code and the Criminal Code was ongoing. Social mobilization activities involving the State and civil society were also being undertaken to change mindsets, such as the partnership struck between the Government and a women's non-governmental organization (NGO) for the training of paralegals in remote villages on the promotion of women's rights; and the retreat organized by the Government in 2010 to educate parliamentarians on the need for gender-sensitive legislation and gender-responsive budgeting.

8. Following a 1996 study which found that female genital mutilation affected 12 per cent of women in the country, the Government had taken measures to address it, including the adoption of Act No. 98-16 of 17 November 1998 prohibiting female genital mutilation, and organization of an awareness campaign to educate members of the judiciary, traditional leaders and the general public on the harmful effects of the practice. A follow-up study conducted in 2007 had shown that the practice had declined, affecting 6.9 per cent of women. In fact, activities had even been organized to celebrate the end of the practice in various communities, evidence that efforts to combat the scourge were paying dividends.

9. **Mr. Hamadou** (Togo) said that composition of the delegation, which included high-ranking officers from various fields related to human rights, reflected the Government's determination to combat all forms of torture and human rights violations. Replying to a question put previously about young detainees, he said that while there might have been some isolated cases involving minors who did not have birth certificates and whose ages could not be ascertained, young detainees were never mixed with adult detainees. From an administrative standpoint, prisons fell exclusively under the jurisdiction of the Ministry of Justice, although other ministries intervened in areas where the Ministry of Justice did not have expertise, such as in the provision of prison guards, which was the responsibility of the Ministry of National Security.

10. With regard to alleged threats made against the organizers of a 12 February 2011 demonstration, freedom of assembly and demonstration was recognized in Togo and a demonstration could only be banned for objective and verifiable reasons. Although the Government did its utmost to ensure that the rule of law was respected and that laws that addressed the Committee's concerns were adopted, it still faced certain obstacles on the ground. When it decided to abolish the death penalty, Togo had to tread very cautiously, to make sure that the abolition was final and irreversible, unlike some countries which abolished the practice too hastily, only to later reverse their stance.

11. The Committee should understand that Togo was doing its utmost, because for 20 years when the country experienced nothing but economic crises, devastating torrential rains and hard choices designed to meet the conditions for qualification under the Highly Indebted Poor Countries Initiative, it had been more concerned with survival rather than the adoption of laws. However, as conditions had improved, it would be acting more rapidly to address the Committee's concerns.

12. The National Human Rights Commission made it a point to report any cases of human rights violations that required urgent action. That was the case with the detainee who had been beaten and died while being transferred by the judicial police. When his case had come up, the judge had given instructions to the arresting officers to carry him to the hospital instead of detaining him, but he died from his injuries. The Government had taken that unfortunate case very seriously and had given strict instructions to have the issue resolved and to ensure that no such incident occurred again in future, and that the perpetrators should be brought to justice.

13. With regard to legislation relating to article 88 of the Covenant, the Government was adopting the same slow but cautious approach as it had done with the death penalty. As the majority of the population felt uncomfortable with the practice of homosexuality, it was important not to adopt legislation too hastily, at the risk of hurting the very group that was being protected. On the issue of impunity, the Government had created the Truth, Justice and Reconciliation Commission to shed light on the unfortunate events that had taken place in the country, and to ensure that perpetrators of crimes of hatred were brought to justice and victims were compensated.

14. In response to a question about measures taken to abolish polygamy once and for all, he said that the issue would be addressed in the revised Individuals and Family Code. With regard to the process of adopting laws, the Government generally submitted draft laws to the National Assembly for adoption, but the Assembly could also introduce legislation on its own. Once the texts were adopted, they were forwarded to the President for signature. However, there was no specific time frame for their adoption. With regard to the ages of detainees, while the age of majority was 18, minors could not be detained until they reached 14 years of age.

15. **The Chairperson** invited the Committee to put questions to the delegation regarding questions 16 to 27 on the list of issues.

16. **Mr. O'Flaherty** said that while Togo's statement of intent regarding protection of minority rights under article 27 of the Covenant (written responses, CCPR/C/TGO/Q/4/Add.1, paras. 199 et seq.) was laudable, the Committee had to know what the actual situation was in a country with so many ethnic groups. He asked the delegation to comment on the findings in the 2008 concluding observations of the Committee on the Elimination of Racial Discrimination that ethnically motivated crimes were being committed with impunity (CERD/C/TGO/CO/17, para. 13), that there were insufficient legal safeguards of the right of indigenous peoples to own property and develop their own resources (para. 17), and that certain ethnic groups were underrepresented in both the army and the civil service (para. 18); and to indicate what the Government had been doing to remedy those particular problems.

17. In connection with question 27 on the list of issues, the Government was to be applauded for its plan to hold a workshop on an effective follow-up to the Committee's concluding observations and recommendations. He wondered if it had also considered establishing an ongoing national consultative process regarding human rights, and a universal periodic review process, prior to preparing any report to a treaty body.

18. **Mr. Salvioli**, referring to question 18 on the list of issues, asked whether the Centre for the Training of Judicial Officials (written responses, para. 169) offered

training in human rights, in the provisions of the Covenant and in the jurisprudence of both the Human Rights Committee and the Committee on the Elimination of Discrimination against Women. Since the delegation's position was that the executive branch should have no sway over the judiciary, it would be interesting to hear what was being done to ensure that the competitive examinations for entry into the judiciary were impartial and not subject to ethnic favouritism. Also, more explanation was needed of the "presumption of guilt" (written responses, para. 170), which at first sight seemed incompatible with the due process provisions of the Covenant.

19. With regard to questions 19 and 20, he would like to know when the Government was expected to adopt the draft bill on free legal assistance (para. 172); and how the drafting of legislation to provide compensation for miscarriages of justice was proceeding, how the public was being kept abreast of those discussions and whether there were any administrative services already dealing with that problem.

20. On the question of freedom of expression, assembly and association, Togo maintained (written responses, para. 183) that its restrictions were fully compatible with article 21 of the Covenant, yet it also acknowledged that its High Audio-visual and Communications Authority had taken disciplinary action against certain radio and television broadcasters (para. 185). It was known, in addition, that journalists had been tried for expressing their opinions, had received threats from public officials, including death threats, and had even been attacked by public officials, and that peaceful protest marches had been prevented — all of which were causes for concern. Although the procedures for registration of associations and NGOs had been streamlined (written responses, para. 198), it could still take several years for watchdog groups to receive authorization, thus discouraging the healthy public scrutiny of government that was an essential element of freedom of expression under the Covenant. He noted, however, that Togo had indicated that it took seriously its obligation to listen to its civil society organizations when they demonstrated on behalf of the freedoms of expression, assembly and association.

21. **Ms. Waterval** said that there was no issue with the registration of religious organizations in Togo, but noted, with reference to freedom of expression, that no explanation had been given of the grounds on which the High Audio-visual and Communications Authority suspended the activities of media organizations, or what it had deemed to be the irregularities and excesses (written responses, para. 185) that had justified some suspensions — a number of which seemed to have been intended simply to stifle criticism of the Government. She asked what criteria Togo had established since 2005 to ensure that the Authority was autonomous and did not serve as a political tool, and to provide compensation for any violations by it of the freedom of expression. Could the National Human Rights Commission issue enforceable decisions against the Authority?

22. The Government should review the conditions it had set for authorizing peaceful demonstrations: as outlined in the written responses (paras. 195-197), they seemed intended to discourage participation, in violation of article 21 of the Covenant. She wondered if the Government always scrutinized the reliability of its sources of information before refusing permission, if the police had ever been used to prevent peaceful demonstrations, and if advance notification of human rights demonstrations was still required.

23. **Ms. Motoc** asked, with reference to article 27, where Togo stood on the distinction made in the United Nations Declaration on the Rights of Indigenous Peoples between minorities and indigenous peoples, a distinction that was crucial in terms of rights to land and resources. Many African States, finding it difficult to distinguish between the two, had not signed the Declaration.

24. There had been a number of NGO complaints about Togo's curtailment of freedom of expression and its control over the operations of private radio stations. She asked for comment on two recent closures of stations in opposition to the Government. She would also like information on the impact of the new legislation regulating the freedom of assembly.

25. **Mr. Bouzid**, referring to the protection of internally displaced persons and returning refugees (question 17), asked if the Government had now ratified the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, and if it intended to sign the 1954 Convention relating to the Status of Stateless Persons. Noting that the same body was responsible for reviewing both the applications and the appeals of refugees seeking repatriation, he wondered if the

Government planned to establish a second committee to separate the two functions.

The meeting was suspended at 11.10 a.m. and resumed at 11.35 a.m.

26. **Ms. Azambo** (Togo) assured the Committee that all levels of Government had adopted a participatory approach to civil society organizations and the media. It had met with civil society organizations to hear their views during the drafting of its periodic report. In December 2010 the Government had set up a formal framework for consultations between the State, civil society, human rights non-governmental organizations and the media. Also, the forthcoming Open Doors initiative referred to in the written responses to question 27, at which all would be invited to express themselves freely, would help the Government to chart its human rights course.

27. **Mr. Kodjo** (Togo) said that the human rights training provided to all judges and court clerks was in the form not of courses but of a series of lectures and seminars reviewing the provisions of all international instruments that could be invoked in the Togolese courts. The programme was already under way under the direction of the National Human Rights Commission. Similarly, all prison officials, who already had military and professional training, would receive special training in the rights of prisoners and the proper conditions of detention.

28. On the "presumption of guilt" issue, the written response was meant not as an explanation of any established legal principle, but rather as a denunciation by the Government of what was unfortunately the usual attitude of the courts towards the accused. Togolese law of course mandated the presumption of innocence, but the courts invariably shifted the burden of proof to the defence, in practice establishing an unjust presumption of guilt. That was what the Government was condemning, and what the country's NGOs had also pointed out.

29. The judicial reform legislation currently before the Assembly called for the establishment of regional administrative courts to supplement Togo's two courts of appeal and the Supreme Court. The regional administrative courts would be able to hear cases of miscarriage of justice and, where appropriate, award compensation.

30. In all prisons in Togo, minors were held in separate quarters, usually in an institution near their community. However, the usual policy of the Government was not to incarcerate minors but to keep them under home surveillance in their families.

31. **Mr. Baragou** (Togo) said that, to maintain ethnic balance, recruitment of security forces was an open, voluntary process based on quotas, and included women. While every effort was made to dedicate an equal amount of time to recruitment in all prefectures, the number of volunteers from each of them varied.

32. **Mr. Hamadou** (Togo) said that a draft law to protect stateless persons was being considered for adoption by the National Assembly and that similar steps had been taken to protect minorities. While the concept of indigenous peoples did not exist, all minorities and stateless persons were protected by the laws in place. In respect of access to justice, funds had been allocated to provide public access to legal counsel and work on a draft legal defence bill was ongoing. The Truth, Justice and Reconciliation Commission had been established to address the concerns of victims of human rights violations from 1958 to 2005. In particular, a law on victim compensation was being drafted and was expected to be adopted quickly in the National Assembly.

33. Turning to the right of peaceful assembly, he said that demonstrations could be prohibited only if they presented a safety risk. A draft law to prevent prohibition of peaceful assembly had been crafted with input from journalists, civil society and the United Nations High Commissioner for Human Rights and its adoption was pending. The delegation would provide the Committee with a copy and was open to changes the Committee might recommend.

34. In respect of freedom of association and expression, while associations were encouraged to register their establishment with the Government for acknowledgement purposes, no authorization was required to form associations. The radio stations that had been closed had not complied with national regulations. There were a number of radio stations in operation that were critical of the Government. The High Audio-visual and Communications Authority and the National Human Rights Commission were independent from the Government and enjoyed equal standing in its eyes. The composition of the High Authority would change soon and the incoming

officials would likely work more effectively with the National Human Rights Commission. Lastly, efforts were under way to coordinate awareness-raising campaigns with civil society, targeting rural areas in particular. Relations between the Government and civil society had improved markedly and the Government was open to recommendations from its civil society.

35. **Mr. Iwasawa** said that he had served as a government-nominated member of the United Nations Permanent Forum on Indigenous Issues in 2002-2004. Dr. Ayitegan Kouevi, who identified himself as an indigenous Togolese, had served at the same time as a member nominated directly by indigenous organizations. It was therefore difficult to understand how the Government could claim that there were no indigenous peoples in Togo. He would appreciate clarification.

36. **Mr. Neuman** enquired about the possibility of enacting separate fast-track legislation on the right to habeas corpus.

37. **Mr. O'Flaherty** said that he, too, would appreciate clarification as to the existence of indigenous peoples in Togo, in particular in light of paragraph 17 of the concluding observations of the Committee on the Elimination of Racial Discrimination noting that the legal instrument governing property matters was not adequate to guarantee the land rights of indigenous peoples (CERD/C/TGO/CO/17).

38. **Mr. Bouzid** asked how many lawyers there were and whether their numbers were sufficient to meet the demand for legal counsel. He would appreciate it if the delegation could discuss the lack of legislation concerning clients' rights to be accompanied by legal counsel throughout the legal processes.

39. **Sir Nigel Rodley** said that prison conditions were in clear violation of article 7 of the Covenant. While he welcomed measures to improve prison conditions in the long term, he wondered whether the State party was considering a remedy that would bring immediate improvements.

40. **Mr. Hamadou** (Togo) said that he wished to rectify his earlier remarks: under article 302 of the Children's Code, children could not be detained until the age of 15. Turning to the issue of indigenous peoples, he said that Togolese ethnic groups did not meet the criteria of international treaty bodies to be considered indigenous. They were nonetheless protected by the same mechanisms that protected stateless persons and minorities.

41. In respect of the right to habeas corpus, detentions had to be proven arbitrary before the right of remedy was even addressed. The Government was working with NGOs to raise awareness in an effort to combat arbitrary detention. There were approximately 220 lawyers in Togo, all of whom were located in Lomé, for a population of approximately 5 million. Incentives were being offered to encourage lawyers to live outside of Lomé, and legislation emphasizing decentralization was being drafted. The public defence system that provided legal counsel during the sentencing phase of a trial was also being changed. The Ministry of Justice had published a circular informing detainees that they could have access to legal counsel from the moment they were detained. Turning to the issue of prison conditions, he said that measures had been taken to provide for the early release of detainees who had served more than one half their sentence. Other measures to improve conditions were being considered in consultation with NGOs, civil society and development partners.

42. **Mr. Kodjo** (Togo) said that persons who were arrested and held in police custody were entitled to legal assistance under his country's Constitution. The Code of Criminal Procedure, however, had entered into force prior to the adoption of the Constitution and did not stipulate the procedures that lawyers must follow in order to provide such assistance to detainees. In the absence of legislation in that regard, the Ministry of Security and Civil Protection had informed police stations that persons must be granted access to legal counsel within 24 hours of their arrest. Under the revised Code of Criminal Procedure, however, it would be obligatory to inform persons who were arrested of the charges against them, grant them access to legal counsel within one hour of their arrest, and inform them that they had the right to remain silent until their legal counsel was present. The revised Code of Criminal Procedure, when adopted, would also specify the judicial authority before which detainees should be brought and include provisions on areas of law that were not yet fully addressed by the legal instruments in force.

43. **Ms. Wilson de-Souza** (Togo) said that the Ministry of Human Rights, Consolidation of Democracy and Civic Training was endeavouring to deepen its collaboration with civil society

organizations and that, in 2011, some of those organizations would be invited to participate in certain Ministry-supported activities.

44. **Ms. Chanet** said that, within the framework of Togo's obligations under the Covenant, the circulars issued by the Ministry of Justice were insufficient and afforded detainees only partial rights. It was unnecessary to completely overhaul the Code of Criminal Procedure when it would be sufficient to introduce a single provision guaranteeing the right to legal assistance within one hour of arrest. Persons who were arrested must be brought before a judge at the earliest opportunity for a determination as to the legality of their detention, particularly when the arrest occurred in connection with a criminal offence. It was a misinterpretation of the Covenant to claim that detainees could not be granted legal assistance until a determination had been made as to whether or not their detentions were arbitrary. In that connection, existing problems must be dealt with urgently and not postponed until an all-encompassing and unnecessary law was enacted for that purpose at some point in the future.

45. **Mr. Bouzid** noted that the official language of Togo was French. He asked whether interpretation into other languages was provided for detainees in rural areas who did not understand French, and whether an authority paid for those interpretation services.

46. **Mr. Hamadou** (Togo) said that a revised Code of Criminal Procedure would soon be adopted and that it was unlikely that any new legislation on, inter alia, legal assistance for detainees could be adopted before that Code entered into force. It was not that the Government lacked the will to adopt new laws on legal assistance for detainees, but simply that it was focusing on the adoption of existing draft laws rather than on drawing up completely new legislation. His Government did not deny that arbitrary detentions occurred in Togo and was striving to develop specific, practical mechanisms to address that issue.

47. Although the official language of Togo was French, State-funded interpreters translated court proceedings into other languages for detainees.

48. **Ms. Wilson de-Souza** thanked the Chairperson and the members of the Committee on behalf of the Togolese delegation, and said that the delegation would consider any recommendations that the Committee put forward.

49. **The Chairperson** welcomed the frank report that had been submitted by Togo. Although that report had been submitted five years late, it was hoped that future reports would be submitted on time. She acknowledged that the country's human rights situation had deteriorated as a result of a socio-political crisis that had lasted over 20 years. However, it was clear that Togo was making every effort to improve its human rights record. Positive developments in that regard included the abolition of the death penalty and the recent adoption of a press code. Committee members had noted with concern, however, that a large number of draft laws still needed to be adopted. In particular, Togo needed to adopt a revised Code of Criminal Procedure and an Individual and Family Code at the earliest opportunity.

50. There were no independent mechanisms through which victims of torture could seek redress. Prison conditions remained deplorable and the Committee would not be satisfied on that front until promised improvements had been implemented. Human rights violations that had taken place after the 2005 elections had still not been fully investigated and, in that connection, detainees continued to be held without charge. Pending cases must be addressed as a matter of urgency in order to dispel the impression that a culture of impunity was tolerated in Togo. The draft law on freedom of assembly and the draft law on demonstrations needed to be amended to ensure that they fully complied with the Covenant. Furthermore, additional guarantees were required with a view to strengthening the independence of the High Audio-visual and Communications Authority.

51. *The Togolese delegation withdrew.*

Organizational and other matters (*continued*)

Working methods

52. **Mr. Iwasawa** said that, in his capacity as Chairperson of the Committee, he had met with the President and the Deputy Registrar of the European Court of Human Rights in Strasbourg in January 2011 with a view to furthering cooperation between the Court and the treaty bodies vis-à-vis the registration of cases. A mechanism had been established and contacts appointed to verify case registration status. The talks had also touched on how to prevent overlap between the mandates of the Court and the Geneva-based treaty bodies.

53. He had also attended a Geneva meeting of the Inter-Committee Meeting Working Group on Follow-up. He drew attention to a document on the outcome of that meeting, which had been distributed informally to Committee members, and said that most of the recommendations contained therein were in alignment with established practices of the Committee. Inter alia, the Working Group had recommended that common procedural guidelines should be drafted to complement existing rules of procedure and practices on follow-up, and that, in their decisions, all Committees should request State parties to publish treaty body decisions, translate them into official languages and distribute them widely. All Committees should consider reducing the burden on the rapporteurs on follow-up, possibly through the establishment of working groups or the appointment of co-rapporteurs. The Working Group had also recommended that all Committees should include the provision of information on follow-up to decisions as a standing item to be announced, as appropriate, during press conferences, and that list-serve correspondence, which provided information on new treaty body jurisprudence, should include key words next to the number and name of each decision. State parties to treaties should, moreover, provide information on how they implemented treaty body decisions in their domestic legislation. The Working Group also recommended that Committees should continue to take steps to improve the quality of their decisions, carry out more country visits for follow-up purposes and engage in intersessional follow-up meetings with States parties to that end.

The meeting rose at 1 p.m.